BILL NO. S-97-10- 07

SPECIAL ORDINANCE NO. S- 96-97

AN ORDINANCE approving Contract #6503-97, MICRO-SURFACING PROGRAM between STRAWSER, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Contract #6503-97, MICRO-SURFACING PROGRAM by and between STRAWSER, INC. (sole bidder) and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

> improvements of Streets as per Board of Public Works Resolution No. 6503-97, attached hereto and made a part hereof;

involving a total cost of EIGHTY-FIVE THOUSAND NINE HUNDRED FORTY AND NO/100 Dollars ($85,940.00). Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay, City Attorney

IMPROVEMENT RESOLUTION NO. 6503-97
1997 MICRO-SURFACING PROGRAM
CEDIT

RESOLVED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF FORT WAYNE, INDIANA,

That it is deemed necessary to improve by micro-surfacing the following streets:

1. **EAST DRIVE: DODGE TO CURDES**
2. **DEWALD: CLINTON TO LAFAYETTE**
3. **BUTLER: CLINTON TO LAFAYETTE**
4. **SOUTH BARR: DEWALD TO WILLIAMS**
5. **LEROY: DODGE TO STATE**
6. **BUENA VISTA: DODGE TO LAWNDALE**
7. **LYNN: CAREW TO ANTHONY**
8. **DELAWARE: ANTHONY TO KENSINGTON**
9. **BRIGHTON: ARCHWOOD TO DARTMOUTH**
10. **CATALINA: BRIGHTON TO RIVIERA**
11. **RIVIERA: WASHINGTON CTR. TO CATALINA**
12. **PUTNAM: SHERMAN TO HENSCH**
13. **FOURTH: RUMSEY TO FRANKLIN**
14. **ARCHER: SHERMAN TO HENSCH**
15. **KINSMOOR: BEAVER TO BROADWAY**
16. **CASSELWOOD: HESSEN CASSEL TO AMARILLO**
17. **HOLGATE: REGIS TO 100 FT. N. ADIRONDACK**
18. **MARIVAL: CASSELWOOD TO REGIS**
19. **AMARILLO: REGIS TO 100 FT. N. ADIRONDACK**

All in accordance with the profile, details, drawings, and specifications on file in the office of the Department of Public Works of said City; and such improvement is now ordered.

It is hereby found by said Board of Public Works that all benefits accruing hereunder will be to the general public of the City of Fort Wayne and that no special benefits will accrue to any property owner adjoining said improvement or otherwise assessable under said improvement. The cost of said improvement shall be paid 100% by the City of Fort Wayne County Economic Development Income Tax (CEDIT) Funds.

CONTRACT #6503-97
MICRO-SURFACING PROGRAM
(CEDIT)

WORK ORDER #11310

THIS CONTRACT made and entered into in triplicate this 1ST day of OCT., 1997, by and between STRAWSER, INC., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following improvement:

1. EAST DRIVE: DODGE TO CURDES
2. DEWALD: CLINTON TO LAFAYETTE
3. BUTLER: CLINTON TO LAFAYETTE
4. SOUTH BARR: DEWALD TO WILLIAMS
5. LEROY: DODGE TO STATE
6. BUENA VISTA: DODGE TO LAWNDALE
7. LYNN: CAREW TO ANTHONY
8. DELAWARE: ANTHONY TO KENSINGTON
9. BRIGHTON: ARCHWOOD TO DARTMOUTH
10. CATALINA: BRIGHTON TO RIVIERA
11. RIVIERA: WASHINGTON CTR. TO CATALINA
12. PUTNAM: SHERMAN TO HENSCH
13. FOURTH: RUMSEY TO FRANKLIN
14. ARCHER: SHERMAN TO HENSCH
15. KINSMOOR: BEAVER TO BROADWAY
16. CASSELWOOD: HESSEN CASSEL TO AMARILLO
17. HOLGATE: REGIS TO 100 FT. N. ADIRONDACK
18. MARIVAL: CASSELWOOD TO REGIS
19. AMARILLO: REGIS TO 100 FT. N. ADIRONDACK

All according to Res. No.6503-97 and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of $85,940.00. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.

ARTICLE 3: PROGRESS PAYMENTS AND RETAINAGE

The CONTRACTOR may submit requests for payments no more often than every thirty (30) days for work performed and accepted under the contract. If the contractor is in compliance with the provisions of the contract, the Board will make payments for such work performed and completed. However, in any such case, the Board will retain five percent (5%) of the amount owing to insure satisfactory completion of the contract and to insure Contractor's compliance with the E.B.E. Rider attached to the contract. Payments to the Contractor are not to exceed 90% of the total contract amount until the Owner has verified that the Contractor has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

If the contract is in excess of $100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. Rider attached hereto.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract, including the E.B.E. Rider, is fully performed. Payments to the Contractor are not to exceed 90% of the total contract amount until the Owner has verified that the Contractor has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Engineering Department of the OWNER to promptly make such inspection and will direct the Contract Compliance Department of the OWNER to make a final recommendation on whether the CONTRACTOR made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider.

When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works. Likewise, when the Contract Compliance Department determines that the CONTRACTOR'S efforts constitute good faith efforts to attain the E.B.E. goal as agreed in the E.B.E. Rider, it shall so inform the Board of Public Works through an E.B.E. Compliance Final Report.

Upon receiving both the Engineering Department's and the Contract Compliance Department's recommendations, the Board of Public Works shall issue a final certificate stating the work provided for in this Contract has been completed and accepted, and further stating that the E.B.E. Rider goal has been met. Thereupon, the entire balance of the Contract sum shall be due and payable to the CONTRACTOR; provided only that the CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

In the event that the Board of Public Works determines that good faith compliance with the E.B.E. Rider has not occurred, appropriate reduction in the final payment will

be made, pursuant to paragraph 6 of the E.B.E. Rider attached hereto. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award or any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of construction or upon request of the Office of Compliance.

ARTICLE 7: PREVAILING OR COMMON WAGE SCALE

The CONTRACTOR agrees to pay, and also requires of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

a. Advertisement for Bids, for Resolution No. 6503-97.
b. Instructions to Bidders for Resolution No. 6503-97.
c. Contractor's Proposal Dated 10TH SEPTEMBER 1997.
d. Ft. Wayne Transportation Engineering Services Drawings accompanying bid packet for Resolution No. 6503-97.

e. Supplemental Specifications accompanying bid packet for Resolution No. 6503-97.
f. Workmen's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.
g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
h. Prevailing or Common Wage Scale.
i. Performance and Guaranty Bond.
j. Labor and Material Payment Bond.
k. Right-of-Way Cut Permit.
l. Comprehensive Liability Insurance Coverage.
m. Minority/Female Employment Hourly Utilization
n. E.B.E. Rider

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of TWO (2) YEARS following written acceptance of the work by the OWNER.

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insurer acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.

ARTICLE II: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Public Works of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

ARTICLE 12:

The CONTRACTOR agrees to complete the work specified in the contract by 10/31/97 after having been ordered by the OWNER to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the

Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CONTRACTOR: STRAUSER INC.

BY: _____

Michael W. Buckingham
President

President

BY: _____

Timothy W. Amling
Secretary/Treasurer

Secretary

CITY OF FORT WAYNE, INDIANA

BY: _____

Paul Helmke, Mayor

BOARD OF PUBLIC WORKS

_____

Linda Buskirk
Chairman

_____

C. James Owen
Member

_____

John Stafford
Member

ATTEST: _____

Patricia J. Crick
Clerk

ACKNOWLEDGEMENT

STATE OF ~~INDIANA~~: OHIO
SS:
COUNTY OF ~~ALLEN~~: FRANKLIN

BEFORE ME, a Notary Public, in and for said County and State, this 22 day of SEPT, 1997, personally appeared the within named MICHAEL W. BUCKINGHAM, PRES, who, being by me first duly sworn upon their oaths, say that they are the _____ TIMOTHY W. AMLING, SEC of STRAWSER INC., _____, and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of said Company for the uses and purposes therein set forth.

NOTARIAL SEAL STATE OF OHIO

TONYA M MORRIS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES DEC. 10, 2001

Tonya M. Morris
NOTARY PUBLIC

Tonya M. Morris
(Type or print name of notary)

MY COMMISSION EXPIRES: DECEMBER 10, 2001

ACKNOWLEDGEMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 2nd **day of** Oct., **19**97**, personally appeared the within named Paul Helmke, Mayor of the City of Fort Wayne; Linda Buskirk, C. James Owen and ~~John Stafford,~~ members of the Board of Public Works, City of Fort Wayne, Indiana; and Patricia J. Crick, Clerk of the Board of Public Works, City of Fort Wayne, Indiana, to me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, the Members and Clerk of the Board of Public Works of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledged said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.**

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Carolyn S. Newport
NOTARY PUBLIC

Carolyn S. Newport
Type or Print Name of Notary

My Commission Expires: 6-21-99

Approved by the Common Council of the City of Fort Wayne on day of _____, 19___.

Special Ordinance No._____.

E.B.E. RIDER

THIS AGREEMENT made and entered into by and between the CITY OF FORT WAYNE, hereinafter referred to as "Owner", and STRAWSER, INC. hereinafter referred to as "Contractor",

WITNESSETH:

WHEREAS, Contractor is the apparent low bidder on construction project commonly referred to as the 1997 MICRO-SURFACING PROGRAM which project was bid under Resolution Number 6503-97; and

WHEREAS, Contractor agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as "E.B.E.'s" as subcontractors on this project is 10 % of the contract amount; and

WHEREAS, Owner has, pursuant to Executive Order 90-01 (as amended 12/19/91), adopted a goal of at least 10% of the contract amount to Emerging Business Enterprises as defined under said Executive Order; and

WHEREAS, said Executive Order states:

> "Section 2, Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded. In the event a contractor is unable to subcontract 10% of the contract amount or secure the services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts taken to comply with the participation goals."

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Conditional Award: Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, Owner awards the construction contract to the Contractor.

2. E.B.E. Retainage Requirements: If the contractor is in compliance with the provisions of the construction contract to which this Rider is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain ten percent (10%) of the total amount owing to insure satisfactory completion of the contract and to insure contractor's compliance with this E.B.E. Rider. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Public Works that the contractor has made a good faith effort to subcontract 10 % of the contract amount to emerging business enterprises, the contractor will be paid in full.
In the event there is a determination that good faith compliance with this E.B.E. Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this E.B.E. Rider will be made.

If the contract is in excess of $100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the CONTRACTOR are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in this E.B.E. Rider. Payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with this E.B.E. Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this E.B.E. Rider.

3. Request for Waiver: If at the time final payment application is made, contractor has not attained the 10 % E.B.E. goal, contractor shall file with the final payment application a "Request for Waiver". Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the 10 % E.B.E. goal.

4. Determination of Waiver Requests: The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said Requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.

5. Good Faith Per Se. In any case, a Contractor shall be deemed to have made good faith efforts at compliance where E.B.E.'s have been subcontracted for every sub-contract for which there are qualified E.B.E.'s available.

6. Consequence of Non-Compliance: In the event the Board of Public Works approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between 10 % and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

7. Waiver Approved: In the event the Board of Public Works determines that a good faith effort to comply with this E.B.E. Rider has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

IN WITNESS WHEREOF, the parties have executed this E.B.E. Rider this 1ST day of OCT., 1997.

By:

Contractor

Timothy W. Amling
Secretary/Treasurer

By:

Board of Public Works

Linda Buskirk
Chairman

C. James Owen
Member

John Stafford
Member

ATTEST:

Patricia J. Crick
Clerk

DIGEST STREET

TITLE OF ORDINANCE: Contract 6503-97, Micro-Surfacing Program

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: Contract #6503-97, Micro-Surfacing Program Contract is for improvement of streets as per the attached Resolution.

EFFECT OF PASSAGE: Improvements will be made.

EFFECT OF NON-PASSAGE: Improvements will not be made.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) $85,940.00 (CEDIT)

ASSIGNED TO COMMITTEE (PRESIDENT): _____

MEMORANDUM

TO: Common Council Members

DATE: October 9, 1997

RE: Introduction of Contract on October 14, 1997 for Resolution #6503-97, Micro-Surfacing Program

FROM: Linda Buskirk, Board of Works

****

This contract is for preventative maintenance using a relatively new and effective technique at 19 locations.

We advertised Notice to Contractors on 8/22 and 8/29/97 and received bids on 9/10/97.

The contract for Resolution 6503-97 was awarded to Strawser, Inc. in the amount of $85,940.00. They were the only bidder. The engineers estimate was $90,750.00.

The cost of said project is funded by Cedit Funds.

Read the first time in full and on motion by Hall, and duly adopted, read the second time by title and referred to the Committee on Public Works, (and the City ~~Plan~~ Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, ~~Indiana, on~~ the _____ day of _____, 19____, at _____ o'clock _____ M.,E.S.T.

DATED: 10-14-97

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Hall, and duly adopted, placed on its passage. PASSED (LOST) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	9			
BENDER	✓			
CRAWFORD	✓			
EDMONDS	✓			
HALL	✓			
HAYHURST	✓			
HENRY	✓			
LUNSEY	✓			
RAVINE	✓			
SCHMIDT	✓			

DATED: 10-28-97

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK
Deputy Clerk

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ANNEXATION~~) (~~APPROPRIATION~~) (GENERAL) (SPECIAL) (~~ZONING~~) ORDINANCE ~~RESOLUTION~~ NO. S-96-97

on the 28th day of October, 19 97

ATTEST: Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK
Deputy Clerk

SEAL

Thomas C. Henry
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 29th day of October, 19 97, at the hour of 11:00, o'clock A., M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK
Deputy Clerk

Approved and signed by me this 2nd day of November, 19 97, at the hour of 4:00 o'clock P. M.,E.S.T.

PAUL HELMKE, MAYOR

BILL NO. S-97-10-07

REPORT OF THE COMMITTEE ON PUBLIC WORKS

DIEDRE A. HALL - ARCHIE L. LUNSEY - CO-CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving Contract #6503-97, MICRO-SURFACING PROGRAM BETWEEN STRAWSER, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) (~~RESOLUTION~~)

DO PASS	DO NOT PASS	ABSTAIN	NO REC
Diedre Hall			
Cleveland Lavine			
Thomas E. Henry			
Archie Lunsey			
Martin A. Burns			
Thomas E. Hayhurst			
[illegible]			

DATED: 10-28-97

Sandra E. Kennedy
City Clerk